IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7134 OF 2005

Shri Imran son of Shri Mahmudmiya
Ibrahim Shaikh-through his father. ...Petitioner.
Vs.
Union of India & Ors. ...Respondent.
....
Mr. R. M. Agarwal i/b.Mr. G. R. Agarwal for the Petitioner.
Mr. Ashokan for Respondent No.1.
.....
CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.
February 2, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

Aggrieved by the denial to him of a certificate of 15 years' residence and a consequent denial of a medical seat in the quota set apart by the Union Government for the Union Territory of Dadra and Nagar Haveli, the Petitioner has moved these proceedings under Article 226 of the Constitution.

2. The Petitioner was born on 12th September 1987 in the village of Kilvani which falls in the Union Territory of Dadra and Nagar Haveli. The Petitioner's mother is a Hindu and his father is a Muslim. In the course of these proceedings, it emerged that the

Petitioner's father had a previous marriage with one Zulekhabibi. The relations between the parties to that marriage were strained and Zulekhabibi had moved the Court of the JMFC at Pardi in Misc. Application No.151 of 1986 with a claim for maintenance. That proceeding was compromised by an order dated 30th July 1986. The Petitioner's father is stated to have divorced Zulekhabibi. He married Urmilaben on 25th January 1983 and the Petitioner was born out of the said wedlock. The Petitioner's father joined the service of the Gujarat State Road Transport Corporation on 17th December 1978 as a Bus Conductor and was posted at Vapi. The distance between Vapi and Silvassa is stated to be approximately 15 kms. The Petitioner's mother is employed as a teacher with the Department of Education, Dadra and Nagar Haveli since 1982 and was allotted service quarters on 7th December 1987. The employment certificate issued by the Education Officer of the District Panchayat has been annexed to these proceedings. The Petitioner received his education in the Union Territory of Dadra and Nagar Haveli. The Petitioner has two siblings who were also born in the Union Territory of Dadra and Nagar Haveli. The Petitioner's father was eventually posted by his employer as a Traffic Controller at Silvassa on 26th March 1998. The parental

home of the Petitioner's father is situated at Goima in the State of Gujarat which lies at a distance of 35 kms. from Silvassa. It has, however, been stated that neither of the Petitioner's parents owns any land or house in the village at Goima. Admittedly, the voters' lists in the Union Territory of Dadra and Nagar Haveli reflect the name of the Petitioner's father for the years 1988, 1993, 1995 and 2002. However, it also appears that the voters' lists at Goima similarly contain the names of the the Petitioner's parents between 1988 and 2002.

3. At the Standard XII CBSE Examinations held in 2005, the Petitioner was the second highest ranked candidate in the open category for the Union Territory of Dadra and Nagar Haveli. An advertisement was issued by the Administration on 18th June 2005 for admission to various courses during the Academic Year 2005-06 for which seats were allotted by the Union Government to the Union Territory Administration. The Petitioner submitted his application on 27th June 2005. A domicile certificate dated 21st June 2001 had already been issued to the Petitioner by the Mamlatdar, Dadra and Nagar Haveli, Silvassa. The application form required a candidate to furnish a certificate of domicile in

respect of his parents, issued by the Mamlatdar, Dadra and Nagar Haveli, Silvassa. In addition, a certificate was required of the Headmaster of a recognised school in the Union Territory certifying that the applicant had pursued education throughout in the Union Territory upto the standard necessary for admission to the specified course to which admission was sought. The Petitioner was called for counseling and accordingly appeared for counseling on 22nd August 2005. The Minutes of the Screening Committee which conducted counseling show that the Petitioner was recommended for admission to a seat for the MBBS Degree Course at the B.J. Medical College, Pune in the general category. The Petitioner was placed second in the merit list of selected candidates. At this stage, the Sixth Respondent who is the Assistant Director of Education at Silvassa addressed a letter to the Petitioner on 7th September 2005 calling upon him to furnish a certificate to the effect that his father was a permanent resident in the Union Territory and was residing therein for a continuous period of the previous 15 years. The Petitioner contacted the office of the Fourth Respondent and filled out a questionnaire dated 12nd September 2005 and furnished documentary material including a certificate from the Grampanchayat at Goima recording that the

Petitioner's father has no house standing in his name and a letter evidencing the cancellation of his Ration Card at Goima in the year 1990. The Petitioner's father also submitted an affidavit dated 14th September 2005. On 14th September 2005, the Mamlatdar, Dadra and Nagar Haveli informed the Assistant Director of Education that on going through the documentary evidence, “it appears that the Petitioner's father was not found to be continuously staying in the Union Territory for a period of 15 years”. The Petitioner moved a representation before the Collector, the Director of Education and before several other authorities. This was, however, of no avail and the Petitioner was not granted admission to the seat for which he was recommended by the Screening Committee at the MBBS Degree Course at the B.J. Medical College, Pune. It is the case of the Petitioner that he was deprived of admission to the MBBS Degree Course by the Fourth and Sixth Respondents who acted in concert with a view to favour some other candidate. The Petitioner has submitted that he was victimised because he has no connections, being the son of a Bus Conductor with modest means.

4. An affidavit in reply has been filed in these proceedings

on behalf of Respondent Nos.2 to 6 in which it has been averred that the Administration of the Union Territory decided to allocate seats in accordance with the provisions contained in certain guidelines dated 9th July 1990, to which a reference would be made shortly hereafter. According to the Respondents, the guidelines prescribe the requirement that the parents of the candidate should have permanent residence in the Union Territory for a continuous period of 15 years. After the counseling round took place, it has been averred that the authorities "on receiving representations from the public and instructions from higher authorities" again interpreted the provisions of the eligibility criteria contained in the guidelines at a meeting held on 6th September 2005 and decided to call for certificates of permanent residence from all provisionally selected candidates by 14th September 2005. It appears from the Minutes of that meeting that the issue of the allotment of reserved seats was discussed in the context of views expressed by the Member of Parliament from the Union Territory and a decision was taken to require candidates to furnish a certificate of permanent residence. In so far as the Petitioner is concerned, it has been stated that the name of his father was borne on the electoral rolls both in the Union Territory of Dadra and Nagar Haveli as well as in

the village of Goima in the State of Gujarat during the period 1988-2002. On this basis the authorities formed the view that the Petitioner's father had only intermittently resided at Goima and Silvassa and had no continuous residence of 15 years at Silvassa as required by the eligibility criteria.

5. In the affidavit in rejoinder that has been filed on behalf of the Petitioner by his father, the allegation that the father was not continuously residing in the Union Territory has been denied. It has been stated that the Petitioner's father was married to Zulekhabibi with whom there was a divorce and that he married Urmila Patel (who upon conversion to Islam came to be named Mumtajbi). It has been stated that since 1984-85, he has resided continuously at Silvassa. The Petitioner's mother has been employed in the Union Territory since 1982 as a teacher and she has been allotted service quarters in 1987. The Petitioner's father has stated that after his marriage, there has been hardly any occasion for him to visit Goima, a place which he has avoided in view of the tense atmosphere that resulted upon his marriage to a woman professing another religion.

6. On behalf of the Petitioner, it has been submitted that the requirement of a certificate of permanent residence was imposed upon the Petitioner with a view to defeat his selection, as a candidate rightfully entitled to admission, being second in the order of merit. Now from the record before the Court, it emerges that sometime in the year 1980, a communication (No.14045/24/80/GP (1) was issued by the Government of India in the Ministry of Home Affairs to the Administrator of the Union Territory noting that the area comprised therein was economically backward and emphasising the need to ensure allotment of seats to professional courses to permanent residents of the Union Territory. The letter recommended that the expression 'local' in so far as the Union Territory is concerned shall mean thus:

> “The term 'Local' in so far as the Union Territory is concerned, shall mean;
>
> -1. A person who is permanently residing in the Union Territory of Dadra and Nagar Haveli and is:-
>
> -(a) a person either of whose parents were born in the Territory; or
>
> -(b) Spouse/children of persons mentioned in (a) above;
>
> Or

-2. A person who has had a minimum of 10 years continuous education in the U.T. of Dadra and Nagar Haveli (where he/she has also been residing during that period) leading to acquiring of the minimum educational qualifications laid down for the post under the Dadra and Nagar Haveli Administration, to which appointment is sought;

Provided that cases of persons who have had educational qualifications outside the U.T. on scholarships awarded by the U.T. Administration or due to non-existence of necessary educational facilities in the U.T. may be considered on merits by the Administrator.

"Permanent residence" for this purpose will mean a period of continuous residence in the Territory of Dadra and Nagar Haveli for 10 years."

An administrative order was thereupon issued by the Administrator of Dadra and Nagar Haveli prescribing the conditions of eligibility for admission to professional courses in the following terms:

"1. A person who is permanently residing in the Union

Territory of Dadra and Nagar Haveli and is:-

-(a) a person either of whose parents were born in the Territory; or

-(b) Spouse/children of persons mentioned in (a) above;

Or

-2. A person who has had a minimum of 10 years continuous education in the Union Territory of Dadra and Nagar Haveli (where he/she has also been residing during that period) leading to acquiring of the minimum educational qualifications laid down for the post under the Dadra and Nagar Haveli Administration, to which appointment is sought;

Provided that cases of persons who have had educational qualifications outside the Union Territory on scholarships awarded by the Union Territory Administration or due to non-existence of necessary educational facilities in the U.T. will be considered on merits;

Or

(3) A person who is residing in Union Territory or Dadra and Nagar Haveli continuously for 10 years."

Thereafter, on 9th July 1990, an order came to be issued by the Administrator of the Union Territory in supersession of all previous instructions issued for the purposes of prescribing general criteria for selection of candidates against seats allotted to the Union Territory by the Government of India. The order of 1990 prescribed revised criteria of eligibility and listed out the priorities under which admissions would be granted. The first in the list of priorities is the following:

> -(i) First priority shall be given to those permanent resident and of domicile of the U.T. of Dadra and Nagar Haveli and of whose ward/warden have been educated throughout in this Union Territory upto the standard necessary for admission to specified course not available here."

The expression "permanent residents" is defined as follows:

> "Permanent residents means those parents/Guardians (in case Father or Mother is not alive) of the candidates who are staying for continuous 15 years in this Union Territory. (a) The Mamlatdar, Dadra and Nagar Haveli,

> will issue necessary certificate to this effect based on ration card, Parliamentary constituency electoral rolls and other such proofs supported by an affidavit to that effect. (b) the dependence certificate issued by the Mamlatdar, Dadra and Nagar Haveli will have to be attached to the application in case of those who are claiming guardianship of the candidates."

The requirement of ten years' continuous residence stands enhanced to fifteen years.

7. Counsel for the Petitioner relied upon a judgment of a Division Bench of this Court in **Rachana Vijay Shah vs. The Administrator** (Writ Petition 5519 of 2005 decided on 23rd August 2005). In that petition, the Petitioner had challenged the action of the Administrator in allotting reserved seats for medical education in the Union Territory of Dadra and Nagar Haveli. The contention of the Petitioner was that the order of 1990 had superseded all earlier interpretations in respect of the selection and nomination of reserved class candidates in the matter of allotment of seats. The contention of the Petitioner was that the expression "permanent residents" in the order of 1990 must be read as flowing from the

communication of 1980 of the Government of India. The submission was that the expression "OR" in the communication of 1980 meant that subsequent categories would become applicable only if a candidate falling in an earlier category was not available. This submission was rejected by the Division Bench which held that the word "OR" clearly gave an option and made all the categories mentioned therein eligible. The Division Bench held that the expression 'permanent residents' also defines continuous residence in the Union Territory for 10 years and this was the criteria which was presently applied for granting reserved seats to candidates.

8. On behalf of the Petitioner it was submitted that the expression "permanent residence" would mean a residence of 10 years and that the requirement of 15 years' residence in the Union Territory had not been insisted upon by the Respondents. We are not inclined to accede to that submission for a number of reasons. Firstly, it is common ground between the Counsel before the Court that there was no occasion for the Administration of the Union Territory to file an affidavit in the earlier proceedings explaining the position: the petition came to be dismissed summarily at the stage

of admission and Counsel appearing on behalf of the Administration in these proceedings has stated before the Court that there was, as a result, no occasion for the Administration to take up the matter any further. Secondly, the administrative instructions which have been issued by the Administrator of the Union Territory on 9th July 1990 must be regarded as having been issued in pursuance of the administrative powers conferred by Article 239 of the Constitution. The administrative order of 9th July 1990 categorically provides that it is in supersession of all previous interpretations issued prescribing the general criteria for admission. The Administrator of the Union Territory is entitled to issue such guidelines which will hold the field unless replaced by legislation. The judgment of this Court would also show that the Court was dealing with an issue relating to nomination to reserved seats.

9. The next issue relates to the denial of a certificate of permanent residence. From the narration of facts, it is evident that after the round of counseling took place, a decision was taken by the Administration to call for certificates of permanent residence certifying that the parent of each candidate was in continuous residence of the Union Territory for a period of 15 years. From the

affidavit in reply it is evident that the sole basis on which a certificate was denied to the Petitioner was that the name of his father appeared in the electoral rolls of the Union Territory and of village Goima in the State of Gujarat during the period 1988-2002. Counsel appearing on behalf of the Administration also stated, during the course of his submissions that this is the sole basis on which a certificate was denied. In the affidavit in reply filed on behalf of the Respondents, the following statement has been made in regard to the residence of the Petitioner's father:

> “ The Petitioner while claiming to be a Domicile of Silvassa also has a dual and permanent residence elsewhere in Gujarat at Village Goima, Ta. Pardi, Dist. Valsad. I submit that upon the proper verification by the Mamlatdar, Dadra and Nagar Haveli district, it is ascertained that the Petitioner's father Mr. Mohamadmiya Ibrahim Shaikh is having his permanent residence at the above village where he is staying with his first Muslim wife and his name with the said first wife is still appearing in the Electoral Roll for the last several years at least from 1988-2002.”

However, Counsel appearing on behalf of the Respondents has fairly conceded before the Court that the statement that the names of the Petitioner's father and his first wife appeared in the electoral rolls of 1988-2002 is incorrect. Admittedly, there has been a divorce with the first wife and the electoral rolls contain the name of the Petitioner 's mother whom his father married after the first divorce. The statement in the affidavit filed on behalf of the Respondents that the Petitioner's father has only an intermittent residence between Goima and Silvassa is a matter of conjecture and is prima facie contrary to the documentary material that has been placed on the record. We find merit in the submission which has been urged on behalf of the Petitioner that the denial of a certificate of permanent residence to the Petitioner was without an evaluation of the material on the record. At least prima facie at this stage we are inclined to take the view that the denial by the authorities was in the face of the overwhelming weight of the evidence on record. The material on the record shows that the parents of the Petitioner were married on 25th January 1983 and that the Petitioner was born on 12th September 1987 in the Union Territory of Dadra and Nagar Haveli. The Petitioner has two other siblings, also born in the Union Territory. The petitioner's father

had an earlier marriage which had ended in a divorce. The subsequent marriage by the Petitioner's father, who professes Islam, was to Urmilaben, the Petitioner's mother who is a Hindu. The Petitioner's mother is employed as a teacher by the Administration of the Union Territory since 1982 and she was allotted service accommodation in 1987. The Petitioner's father came to be employed in the Gujarat State Road Transport Corporation and was a Bus Conductor at Vapi, which is at a distance of 15 kms. from Silvassa. The Petitioner's father has stated that there is no house standing in his name or any property at Goima in the State of Gujarat. The ration card at Goima was cancelled in 1990. Since 1998, the Petitioner's father has been posted within the Union Territory as a Traffic Controller at Silvassa. In these circumstances, the rejection by the authority of a certificate of permanent residence on the sole ground that the electoral rolls at Goima as well as in the Union Territory of Dadra and Nagar Haveli contain the name of the Petitioner's father cannot be sustained. There ought to have been in our view, a far more careful application of mind by the authorities to all the circumstances on the record. That has not been done.

10. Consequently, we are of the view that there must be a fresh determination by the Respondent authorities of the question as to whether the Petitioner is entitled to a certificate of permanent residence on the basis of the documentary material which has been produced by the Petitioner. We have indicated prima facie that the denial of the certificate was contrary to the weight of the evidence on the record. However, we observe that it would be open to the Second, Third and Fourth Respondents to arrived at a final determination after a fresh consideration of all the material. The Mamlatdar being the primary fact finding authority would have to make that determination.

11. In so far as the question of admission is concerned, we are unable to accept the contention of Counsel appearing on behalf of the Petitioner that this Court should direct that the Petitioner be admitted against an additional seat in the Union Territory of Dadra and Nagar Haveli for the next Academic Year. In so far as the present Academic Year is concerned, the academic term has already commenced. The Supreme Court has emphasised the necessity of observing the time schedule for completing admissions by the cut off date prescribed by the Medical Council of

India, in **Medical Council of India vs. Madhu Singh**, (2002) 7 SCC 258, and in **Mridul Dhar v. Union of India,** (2005) 2 SCC 65. In so far as the creation of additional seats is concerned, successive judgments of the Supreme Court have categorically held that High Courts must not, in the exercise of the jurisdiction under Article 226 of the Constitution, issue directions which have the effect of creating additional seats since that would inter alia affect the infrastructure that is available to the existing students to pursue their studies in accordance with the norms prescribed by the Medical Council. (**Medical Council of India vs. State of Karnataka,** 1998(6) SCC 131 and **State of Punjab v. Renuka Singla**, 1994(1) SCC 175.) The judgments of the Supreme Court in which this principle has been laid down have been set out in a judgment of a Division Bench of this Court in **Jimmy Abraham Thomas vs. State of Maharashtra,** 2002 (3) Bom. C.R. 219. Counsel appearing on behalf of the Petitioner submitted, relying upon an order of the Supreme Court dated 17th January 1991 in **Sindhu Thomas vs. The Administrator, Dadra and Nagar Haveli,** (Petition for Special Leave to Appeal (Civil) No.14337 of 1989) that it would not be in excess of the jurisdiction of this Court under

Article 226 of the Constitution to direct the creation of an additional seat for the forthcoming Academic Year. We are of the view that it is clearly not open to the High Court to issue any such direction in view of several decisions of the Supreme Court categorically affirming that the High Court in the exercise of the jurisdiction under Article 226 of the Constitution should not issue any such directions for the creation of an additional seat. Alternately, even setting apart one seat for the Petitioner in the next academic year will seriously impinge upon the interest of students who would be eligible to apply for admission in the next year. Such students will not be treated fairly by excluding one seat from the field of competition in the next year. That would be impermissible.

12. In the circumstances, we proceed to dispose of this Petition by directing the Second, Third and Fourth Respondents to reconsider the application of the Petitioner for the grant of a certificate of a permanent residence in the light of the observations contained in this judgment. It would be open to the Petitioner to file a further representation together with any additional documentary material that the Petitioner may seek to rely upon within a period of four weeks from today. The Fourth Respondent shall decide the

question as to whether the Petitioner is entitled to a certificate of permanent residence within a period of one month thereafter. In the event that the Petitioner is found to be entitled to a certificate of permanent residence, and the Petitioner applies for admission for the next Academic Year, the application shall be processed without the deduction of any marks on the ground that the Petitioner is applying on a second occasion for admission.

13. Before parting with the matter, we may note that Counsel appearing on behalf of the Petitioner has sought liberty to adopt appropriate proceedings in accordance with law in respect of the other prayers contained in the petition including in regard to prosecution and the claim for compensation. We clarify on the request of Counsel that we have had no occasion to deal with those prayers and we leave it open to the Petitioner to espouse such remedies as are open in law.

14. The petition shall accordingly stand disposed of in these terms. In the facts and circumstances of the case, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)